

**ARIZONA SUPREME COURT**  
***Committee on Civil Rules of Procedure in Limited Jurisdiction Courts ("RCiP.LJC")***  
Draft Minutes  
 March 30, 2012

Members present:

Hon. Paul Julien, Chair  
 Hon. Timothy Dickerson  
 Hon. Maria Felix  
 Hon. Hugh Hegyi  
 Hon. Gerald Williams  
 Mary Blanco  
 Veronika Fabian  
 David Hameroff  
 Stanley Hammerman  
 Emily Johnston  
 Nathan Jones  
 William Klain  
 George McKay  
 David Rosenbaum  
 Anthony Young

Members present by telephone:

Hon. Jill Davis

Guests:

Hon. David Widmaier  
 Hon. Steven McMurry  
 Kenneth Seidberg  
 Theresa Barrett

Staff:

Mark Meltzer  
 Julie Graber

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**1. Call to Order; approval of meeting minutes.** The Chair called the meeting to order at 10:05 a.m. The members reviewed the minutes of the October 25, 2011 Committee meeting, and a member moved to approve those minutes. The Chair requested at page 4, under topic 4 ("cases involving assigned debts"), a modification (shown by underline) of the following sentence:

"A motion was then made that if the workgroup unanimously agrees to language for Rule 121(a)(4) and the disclosure requirement for assigned debt cases, that their agreed-upon language would be deemed adopted by the full Committee and included within the draft version of the rules."

**Motion:** The motion to approve the October 25, 2011 meeting minutes as modified was seconded and it carried unanimously. **RCiP.LJC 12-001**

Mr. Hameroff then moved that the workgroup's unanimous one page agreement concerning revisions to Rule 121(a)(4), signed on November 8, 2011, be ratified by members of the Committee and attached to today's meeting minutes.

**Motion:** The motion to ratify the workgroup agreement and attach the agreement to today's minutes was seconded and passed unanimously. **RCiP.LJC 12-002**

**2. General remarks concerning the initial comment period.** The Chair reminded the members that the staggered comment period for R-12-006 provides an opportunity for this Committee to make changes to the earlier version of the proposed rules. Staff presented a summary of comments posted during the initial comment period, and revisions made by staff to the JCRCP as shown in the version provided at today's meeting. During the course of staff's presentation, the members agreed to:

- Retain rather than remove Rule 139(g) concerning a voluntary reduction in the amount of a judgment or verdict
- Approve the addition of a sentence in Rule 140(j) in light of *BYS v Smoudi* (1-CA-CV 10-0906; February 9, 2012)
- Not include a requirement in Rule 141(c) that a movant show a meritorious defense in a motion for relief from a default judgment

Members and guests then made the following comments:

- The rules are still not “approachable” for laypersons. There are too many rules and they do not provide the public with a “lay of the land” that would allow self-represented litigants to meaningfully participate in justice court litigation. Since self-represented litigants will not read the justice court rules, perhaps this committee should simply add provisions to the superior court rules. Self-represented litigants will continue to ask questions to court staff, and court staff will continue to provide them with checklists and handouts.
- This committee cannot help people who will not take the time to read the new rules, and if they fail to read the rules, they do so at their peril. RCiP.LJC should not simplify the rules, as suggested by the Legal Services Committee, to the point that even the least educated litigants understand them.
- Elimination of “incorporation by reference” in the current version of the JCRCP has made the rules longer and less simple, but the rules achieve other salutary goals, such as requiring clear notices to litigants. In light of the length of the rules and the limits of simplifying the text, an easy-to-read guidebook for self-represented litigants would be useful.
- Attorneys will try to find “gaps” in the JCRCP and argue that the superior court rules apply under A.R.S. § 22-211.
- Pending legislation might increase the civil and small claims jurisdictional limits of justice courts. If justice court jurisdiction increases to \$15,000 or higher, there will be

more personal injury cases in justice court, and RCiP.LJC should get input from this stakeholder group.

**3. Rule numbering.** After these preliminary remarks, the Committee focused on the subject of rule numbering. A significant portion of the discussion dealt with ways of making it clear and explicit that case law established under the superior court rules would continue to apply to corresponding rules in the JCRCP, notwithstanding a difference in rule numbers. Some individuals believe that the JCRCP should continue to follow the numbering of the Ariz. R. Civ. P. Staff offered to revise the rules by using the superior court numbering system if anyone could demonstrate how to accomplish this while still preserving the committee's decisions to eliminate certain superior court rules, to consolidate other rules, and to re-sequence the rules to conform them to case flow in justice court civil proceedings. No one mentioned a way to do this. Members and guests then made the following comments:

- The superior court rule numbers are not compatible with the JCRCP's logic, and the justice court rules should retain the new numbering system. Lawyers and judges will quickly adapt to the new numbers. The new numbering system of the JCRCP makes it clear that these are justice court and not superior court rules.
- The JCRCP should restore Table 2, which was included in the prior version, and which cross-referenced the JCRCP to the superior court rules. The family law rules of procedure (ARFLP) deviate from the superior court's civil rule numbering, and use of a cross-reference table in ARFLP is effective in locating corresponding civil rules. A table in the JCRCP should be of similar benefit. In addition to restoring Table 2, the justice court rules should show the superior court rules in brackets, as was done in the most recent version of the JCRCP. The benefits of the new numbering system outweigh adoption of superior court rule numbering.
- It is a huge mistake to deviate from the superior court rule numbering. The justice court rules are significantly different from the family law rules, and by using new numbering, the committee is foregoing the opportunity to explain to litigants that certain superior court rules do not apply in justice court.
- The table of contents of the JCRCP shows that these rules are linear, and users can readily determine where they are in the litigation process.
- The JCRCP should explicitly state that case law developed under the superior court rules also applies to the justice court rules. The JCRCP do not give judges discretion to ignore applicable case law. The same law should apply in every precinct.

Following this discussion, a member made the following motion:

**Motion:** The JCRCP should retain its new numbering system; the JCRCP should include references to the superior court rules in a table as well as in brackets; and a *Committee on Civil Rules of Procedure in Limited Jurisdiction Courts*  
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provision concerning the binding effect of case law on these rules should be incorporated within Rule 101. The motion was seconded and it passed unanimously. **RCiP.LJC 12-003**

Staff asked the members for additional guidance on whether the rules should provide a table of superior court rules that do not apply in justice court. One suggestion was to include an introductory comment stating that any superior rule that has not been included in the JCRCP does not apply in justice court. Another suggestion was to provide this information in a handbook rather than in the rules. A member asked whether A.R.S. § 22-211 should be considered on this point; another member thought this was unnecessary because there will now be a separate set of rules that apply in justice court. A guest noted that while injunctions under Rule 65 will not apply in justice courts, a separate statute in Title 22 permits a justice court to order replevin.

**4. Incorporation by reference.** Judge Widmaier had strongly encouraged that the JCRCP eliminate incorporation of superior court rules by reference, and he was pleased that the current version of the rules had done so. The Chair added that the committee had spent considerable time in determining which rules to incorporate by reference, but that the current version better fulfills the goal of having a self-contained set of rules (“one-stop shopping”) for justice courts. The additional length of the rules is of concern, but a handbook explaining which rules apply in a particular situation might mitigate the added length.

**5. Creditor-debtor issues.** A member suggested that if anyone wanted to re-open the creditor-debtor issue to do so now, and that if there was no motion to re-open, that the Committee should consider the issue resolved. Another member noted that the minutes should reflect that the members considered a variety of comments on both sides of this issue. The members concurred that they favor abiding by the compromise reached by the workgroup, as reflected in the attachment to these minutes.

**Motion:** At this point, a member moved to not adopt a formal recommendation of the State Bar to amend draft Rule 110(b). The State Bar’s recommendation would require that a complaint in an assigned debt case include the date of default and the amount that is due on the date of default.

Discussion on the motion included the following points:

- RCiP.LJC extensively discussed these issues before reaching a compromise.
- The Supreme Court will have all of the comments when it considers the rule petition, and RCiP.LJC should clearly let the Court know its position.
- The Bar’s recommendation is not onerous, and it benefits collections attorneys because federal law requires them to determine the statute of limitations.

- The Bar's recommendation would breed litigation because there is no universal agreement on what constitutes the date of default. (See for example: *Navy Federal Credit Union v Jones*, 187 Ariz. 493, Division Two, 1996)
- The Bar's recommendation would create a substantive requirement, but legislative or policy decisions rather than rules of procedure should provide the substantive requirements.

**Motion passed:** The foregoing motion to not adopt the Bar's recommended amendments to draft Rule 110(b) passed, 12 in favor, and 3 opposed. **RCiP.LJC 12-004**

**6. Discussion concerning specific rules.** Mr. Klain summarized proceedings at the State Bar concerning R-12-0006 earlier this year. He stated that he and Judge Hegyi are members of RCiP.LJC as well as the Bar's Civil Practice and Procedure Committee ("CPPC"), and they accordingly refrained from decision-making concerning R-12-0006 at CPPC meetings. He noted that a CPPC sub-committee formed to study R-12-0006 concluded that the JCRCP was not simple enough. The Bar's Board of Governors did not concur with the sub-committee on that point. The Board of Governors decided to (1) commend RCiP.LJC's work, and support the rule petition; (2) make specific recommendations, most of which were contained in a "redline" version; and (3) present both sides of the consumer debt issue in its formal comment on the petition.

With this background, the members proceeded to discuss particular rules and text in the most recent version of the JCRCP.

Rule 109(b): The State Bar recommended that this rule include a portion of the identical language of superior court Rule 11 to assure that there was no difference between justice and superior courts in the standard regarding the effect of a signature. Although RCiP.LJC did not intend to create a different standard, the Bar's recommendation is well taken. If the JCRCP uses the proposed Rule 11 language, a member inquired if Rule 109(b) could retain the last sentence of the current draft concerning a penalty, including the use of the word "may" rather than "shall" so that imposition of a sanction is discretionary. Although a motion to adopt the Bar's recommendation with the aforementioned sentence of the existing draft of the JCRCP was pending before the Committee, RCiP.LJC tabled the motion to provide Mr. Klain an opportunity to speak informally with State Bar representatives on this point.

Rule 109(a): The State Bar recommended that if multiple parties filing a document are unrepresented, the document must include the signatures of all parties. Staff believes that such a requirement may contradict A.O. 2010-58, which requires only a single signature for electronically filed documents in justice court in this circumstance. This issue is deferred until the next meeting.

Rule 116(a): The State Bar recommended that the list of affirmative defenses be deleted from this rule, and that the rule state that a party "should" state their defenses in the answer rather than

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“must” state them. Some members felt that including a list of the affirmative defenses would educate the public about what they are, and that eliminating them might create a “gap” between superior and justice court rules; but other members thought the list of defenses added little practical information. The list detracted from the goal of simplicity, and defendants who want to raise one of these defenses will do so in a disclosure statement. The members believed that the word “must” was more consistent with the corresponding superior court rule than “should.”

**Motion:** A member moved that RCiP.LJC adopt the Bar’s recommendation to delete the list of affirmative defenses in Rule 116(a); not to adopt the Bar’s recommended use of the word “should” but to retain the word “must” instead; and that the rule state in part that “an answer must state a party’s legal and factual defenses to a claim.” The motion passed unanimously. **RCiP.LJC 12-005**

Rule 121(a)(2): The title of this paragraph will be changed from “a list of other witnesses” to a “a list of other people with knowledge.”

Rule 102(b): The Bar recommended that parties be required to provide an e-mail address to the court. Some members were opposed to this because a number of filers might not have an e-mail address. Moreover, it was felt that if parties send e-mail to the court, they would expect e-mail replies from the court, and some courts prefer to provide notices by phone or regular mail rather than by e-mail. If the litigants want to exchange documents by e-mail, they can do so without informing the court.

**Motion:** A member moved that the requirement for e-mail addresses be in the caption provisions of Rule 108(a) rather than in Rule 102(b). The motion passed unanimously. **RCiP.LJC 12-005**

Rule 111(a): Judge Segal criticized this rule because it would allow a plaintiff to file multiple but unrelated claims against a defendant. The members concluded that the superior court rules allowed this scenario, and no change was required.

Rule 111(a): The State Bar recommended that a sentence be added to this rule to provide that “the sum total of all claims asserted must not exceed the jurisdictional amount for the court.” RCiP.LJC believes that this is a correct statement when claims are not in the alternative, and that judges understand this principle when determining jurisdiction. However, claims are occasionally made in the alternative (for example, a claim for breach of contract and an alternative claim on account; or breach of contract and breach of warranty claims set out in the alternative.) Rule 111(a) should reflect that when there are alternative theories for recovering on the same transaction or occurrence, the amount of the claims should not be added to determine jurisdiction.

Rule 117(f): The State Bar recommended adding language in this rule that would provide that when a party files a counterclaim or cross-claim exceeding the jurisdiction of the justice court, the party is not required to take further action until the case is transferred to the superior court.

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The members did not have unanimous views on the effect of this proposed language, and Mr. Klain will speak with the Bar to get greater clarity.

Rule 121(a)(4) The members agreed to make the change recommended by the Bar concerning disclosure of written or recorded statements, except the word “that” should be used rather than “which.”

Rule 122(f)(4): The members agreed to adopt the Bar’s recommendations concerning payment of an expert’s fee in responding to a discovery request and to add the additional words “or responding to a subpoena.”

Rule 122(f)(5): The members agreed to the Bar’s suggested phrasing of this provision concerning non-parties at fault.

Rule 124(b): The members agreed to modify the State Bar’s redline addition by substituting these words in the notice: “...incurred by the other party as a result of your failure to appear....”

Rule 129: Judge Segal requested that the required notice to an opposing party on a motion for summary judgment include information about what is required in a response. Staff added language in the text of the notice contained within the current draft about what is required, and the members concurred with this addition.

Rule 129: Judge Segal suggested that these rules should not allow an attorney to file an affidavit in support of a summary judgment motion; and that computer generated or “robo signature” affidavits should likewise be inadmissible on summary judgment motions under the JCRCP. Judge Segal also suggested that the JCRCP did not address issues raised by two cases in sister states in which Midland Funding was a party. The members believe that whether an affidavit or other evidence is proper and admissible should be determined by the rules of evidence rather than by the rules of procedure.

Rule 129: Judge Segal recommended a provision in the rules that would require a hearing to dispose of a summary judgment motion. Some members felt that if a motion was uncontested, no hearing should be required; and that even if a motion is contested, a judge should not be required to conduct a hearing if the judge has found that there is a question of fact and the judge intends to deny the motion. Mr. Klain noted that there is a pending superior court rule petition on this issue because the issue affects the perception of fairness and access to justice, and other members agreed that the justice court rule should parallel the text of the proposed superior court rule.

Rule 145: Judge Widmaier had suggested adding the word “constable” in the rule on civil arrest warrants, although A.R.S. § 1-215 appears to include “constable” within the definition of “peace officer.” Judge Widmaier will follow up on this to determine if the addition of “constable” in this rule is necessary.

Rule 148: Judge Widmaier's concern regarding the availability of forms has been addressed in the latest version of the JCRCP.

Various: Ms. Nix suggested that the proposed rules create different burdens of proof in the justice and superior courts. The members believe that the difference between the two rules concerns pleading requirements, but that the burden of proof remains the same in both courts.

Various: The State Bar's redline in a number of rules changed "attorneys' fees" to "attorney's fees." The members agreed that the phrase should remain in the plural possessive form, and they did not make the requested changes.

**7. Next steps.** The Chair advised that staff would circulate a revised version of the JCRCP to the members in advance of the next meeting, scheduled for Friday, April 13, 2012.

**8. Call to the Public; Adjourn.** In response to a call to the public, Mr. Seidberg thanked the members for the opportunity to participate in today's meeting. The Chair expressed appreciation to Judge McMurry, Judge Widmaier, and Mr. Seidberg for their attendance at today's meeting and for their constructive comments on R-12-0006. The Chair also thanked Theresa Barrett for her leadership during the course of this project.

The meeting adjourned at 3:00 p.m.

Please note: The following page is an attachment to these minutes.



**PART VI: Disclosure Statements and Discovery.**

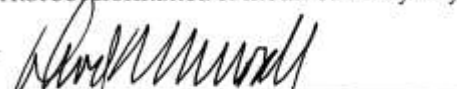
**Rule 121: Duty to serve a disclosure statement.**


*a. Disclosure of information.* Within forty days after the Defendant has filed an answer, or at a time directed by the court, each party must serve on the other parties a written disclosure statement. Every party's disclosure must include the following information:

*(3) Copies of exhibits and information.* (i) A party must provide copies of any documents or exhibits the party will use to support a claim or defense, including copies of electronically stored documents; (ii) In a contested case based upon the collection of a consumer debt (a debt entered into for personal, family, or household purposes), the Plaintiff must disclose all available evidence related to the allegations contained in the complaint. These include: 1. the agreement between the creditor and consumer, if available, upon which the complaint is based; 2. any available billing statement to the consumer; 3. if the debt has been assigned, evidence that the Plaintiff is the owner of the debt; 4. information concerning the date of the last payment made by the consumer, if available; (iii) If the party intends to use at trial any document, object, or exhibit that cannot be easily copied, the party must make the item reasonably available for inspection by the other parties at the pretrial conference or as otherwise agreed to by the parties.

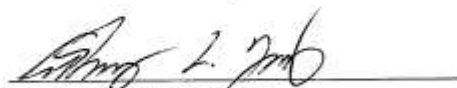
The above language is approved as is and shall not be reformatted or modified in any way.

  
Stanley M. Hammerman, Esq.

  
David E. Hameroff, Esq.

  
Veronika Fabian, Esq.

  
Hon. Gerald Williams

  
Anthony L. Young, Esq.